Supreme Court, U.S.
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UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA
Respondent

On Petition for a Writ of Certiorari To the United States Court of Appeals, Third Circuit

PETITION FOR WRIT OF CERTIORARI

Prepared By: Scott and Brenda Lawvere
Ambassadors for Christ,
c/o P.O. Box 46,
Unityville, Penn. 17774
(717)458-4522

96 pp

QUESTIONS FOR REVIEW

1. Where Appellants presented preponderance of evidence and genuine issues of material fact, did the United States Court of Appeals, Third Circuit's decision conflict with decisions by other Court of Appeals decisions?

2. Where there was evidence that Defendants did not act alone under color of law violating Plaintiffs' rights, but with authorization from policymakers, did the U.S. Court of Appeals conflict with decision by other Courts of Appeal on the same subject matter?

3. Where the Clerk of the Appellate Court failed to file the Appellant's motions and gave legal advice to the defendants, did the Clerk (and or the Court) overstep the scope of their office and prejudice Plaintiffs' rights?

4. Where the United States Court of Appeals affirmed the District Court's decision regarding qualified immunity, do the Defendants have immunity if they acted outside the scope of their office under color of law when violating Plaintiffs' rights?

Scott and Brenda Lawvere, Ambassadors for Christ,

Plaintiffs/Appellants

vs.

EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER MCRAE, District Magistrate; PENNSYLVANIA STATE CONSTABLES; GURN WEBER, CONSTABLE OLD LYCOMING TWP.; STEVEN LITZELMAN, CONSTABLE JERSEY SHORE BOROUGH; LARRY PETERMAN, CONSTABLE SHREWBERRY TWP., all in their official and individual capacities

Defendant/Appellee

UNITED STATES THIRD CIRCUIT COURT OF APPEALS

Respondent

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Petition for Writ of Certiorari

Petitioners Scott and Brenda Lawvere, Ambassadors for Christ, hereby apply pursuant to Title 28, § 1254 United States Code and Rule 10 of the Supreme Court Rules of Procedure, for a writ of certiorari to review order of Respondent, United States Court of Appeals, Third Circuit, where on November 14, 1997, Judges issued an order affirming the District Court's decision granting summary judgment to the named Defendants in civil rights case no.97-7215 (D.C. 4:cv 95-1515). In support of their application, Petitioners state:

I. Order and Opinion

On November 14, 1997, Respondents made and entered an Order affirming Summary Judgment for the Defendants. Said Order is attached hereto as **Exhibit S1, pp. 13-14.** Petitioners filed a Petition for Rehearing on November 28,1997 **(Appendix, pp 16-33),** which the Clerk of Court treated as a Rehearing En Banc even though Petitioners never requested an En Banc hearing since it fails to toll the time pursuant to the Rules of the Supreme Court.

II. JURISDICTION

This Court has jurisdiction to hear the Lawvere's petition for writ of certiorari to review a decision issued by the United States Court of Appeals pursuant to U.S.C. 28, § 1254, wherein the judgment rendered by the Court of Appeals conflicts with decisions of other United States Court of Appeals on the same important matter.

III. Constitutional Provisions

Petitioners are seeking writ of certiorari to review the aforementioned decision by the United States Court of Appeals, Third Circuit, as a result of violations of their

Yahweh given rights as secured by including but not limited to:

Where Petitioners were denied due process and access to the Federal District Court as a result of negligence and delay **(Appendix pp 34-35):** Amendment V & XIV states:

> wherein no person shall be "deprived of life, liberty or property without due process of law."

Where Petitioners were denied a fair hearing and jury trial before Magistrate McRae for an alleged infraction of a homeschool regulation 24 PS § 13-1327, and were denied the right to have access to court files (Cases; NT0000619-94 & NT0000620-94):

Amendment VI states wherein in all criminal prosecutions:

> "the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . " AND
> Amendment V & XIV wherein it states that no person shall:
> "be deprived of life, liberty or property, without due process of law."

Where Principal Schuller filed a private criminal complaint against the Petitioners without approval from the Commonwealth, Rule 106, Pennsylvania Rules of Court, Criminal Procedure **(Appendix pg. 15)** states:

> "When the affiant is not a law enforcement officer and the offense charged includes a misdemeanor or felony . . the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay."

Where Petitioners were never duly served service of process by the East Lycoming School District or Robin Schuller, Amendment V & XIV states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens . . nor shall any State deprive any person of live, liberty or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the law."

Where Petitioners' exercised their God given right, and Defendants interfered in Petitioners' covenant with Yahweh their Creator, to teach their children in the home, denied them access to public information, and were harassed and threatned by the East Lycoming School District, Robin Schuller, and Howard Langdon,

Amendment I States:

> "Wherein Congress shall make no law respecting establishment of religion or free exercise thereof or abridging the freedom of speech or of the press."
>
> AND Amendment VIII: "Excessive bail . . nor excessive fines imposed, nor cruel and unusual punishments inflicted"

Wherein Pennsylvania State Constables and its agents did harass, threaten, and assault Brenda Lawvere and her minor children by pointing a loaded 12 gauge shotgun at them, violated their Fourth Amendment Rights where:

> "The right of the people to be secure in their persons, houses, and effects . . shall not be violated." AND Amendment VIII

Where Pennsylvania State Constables and their agents did arrest Scott Lawvere without warrant, failed to inform him of the reason for arrest and interrogated him without notifying him of his rights under Amendment V & XIV:

> "No person . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."
>
> "In all criminal prosecutions, the accused shall enjoy the right . . to be informed of the nature and cause of the accusation. . . "

IV. Statement of the Case

On April 30, 1997, Scott & Brenda Lawvere filed their Notice of Appeal of a final decision by Judge Muir from U.S. District Court, Middle District of Pennsylvania, granting the Defendants summary judgment after lengthy litigation **(Appendix pp 1-8).** Said Notice of Appeal was directed to the U.S. Court of Appeals, Third Circuit, Philadelphia, PA.

Lawveres had filed a U.S.C. Title 42, § 1983 claim against the named Defendants for violations of Plaintiffs' constitutionally secured rights. Plaintiffs were seeking redress for violations of their due process rights by District Magistrate McRae; for the assault upon Brenda Lawvere and her children for an alleged "home schooling violation" by a State Constable with a loaded 12 gauge shotgun while other Constables failed to prevent such act; for denial of public information and unlawful criminal prosecution on the same alleged infraction by the East Lycoming School District, Robin Schuller, and Attorney J. Howard Langdon; and for violations of Scott Lawvere's rights during his arrest and detention for the same alleged "home school" infraction.

After more than a year of pleadings and motions, many of which the District Court failed to rule upon, and after setting the case for trial, Judge Muir granted summary judgment even though issues of material fact were in existence. Plaintiffs were hampered during discovery by the Defendants' failure to cooperate to answer interrogatories, produce documents, and the seclusion of at least one witness to avoid deposition.

In his Order of January 29, 1997, Judge Muir stated that there was "no evidence of damages" to the Lawveres even though evidence and discovery on the record showed otherwise. Plaintiffs received only silence from the Court in response to their motions to compel discovery; said motions were summarily dismissed as "moot" when judgment was granted. The Court later issued an order apologizing for not ruling timely on Plaintiffs' motions and pleadings - blame was

placed upon a law clerk who allegedly failed to act in a routine manner under the command of Judge Muir by informing Judge Muir that a years worth of Motions and Pleadings had not been disposed of **(Appendix pp 34-35).**

The Court of Appeals affirmed the District Court's decision granting summary judgment and qualified immunity to the Defendants where District Judge Muir stated there was no evidence of "unconstitutional custom and policy" where Defendant School District and Constables could be held liable for the acts of their employees/agents. **(Appendix pp 1-8).** This despite the fact that depositions, affidavits, interrogatories, and documented evidence on the record showed the Plaintiffs did suffer damage. None of the employed Defendants acted alone, but with the approval of policymakers, superiors, and employers **(Appendix pp 16-33).** District Case # 4:cv 95-1515 was scheduled and placed upon the trial calendar just a few months before Judge Muir granted summary judgment.

In addition, the Plaintiffs believe they were not given equal access to the courts on appeal before the United States Court of Appeals. Appellants Lawvere were denied equal access to the courts: a deprivation they have suffered from the outset of the very first action. As noted on the Court of appeals docket, the Clerk's office gave legal advice to the Defendants who were represented by Attorneys certified to practice before the Court **(Appendix pp 36-43, Docket Aug 16, 1997; Appendix pp 70-73, Declaration).** The Clerk's office also routinely failed to file Appellants' motions in a timely fashion **(R.A. Dated August 16, 1997).** In fact, to date Appellants have submitted: an objection to Defendant Constable's Bill of Costs, Motion for Inclusion, Motion for Mandamus, and Motion for Judicial Determination, **(Appendix pp 56-69, Motions and Pleadings not filed),** which still does not appear upon the docket, **(Appellants pp 44-55, Docket dated Jan. 3, 1998)** which was current as of February 1, 1998.

On December 30, 1997 **(R.A. Order 12/30/97; Appendix pp 12-13),** the Clerk's office altered, certified, and issued a copy of a previously issued Appellate Court Order, dated November 14, 1997 **(R.A. 11/14/97 Order; Appendix pp 10-11).** Defendant Constables Motion for Bill of Costs, Appellants Objection, and Motion for Leave had not been submitted until after the issuance of the November 14, 1997 Order, nor had the pleadings on those issues been adjudicated before the issuance of the altered Order of December 30, 1997.

The certified copy of the altered order bears little resemblance to the Order dated November, 14, 1997.

Based upon the foregoing facts and evidence, Petitioners seek review of the decision(s) by the United States Court of Appeals, Third Circuit.

V. Basis for Federal Jurisdiction

The United States Court of Appeals, Third Circuit had jurisdiction to hear Plaintiffs' Appeal pursuant to U.S.C. Title 29, §1291 and F.R.A.P. Rule 3, Title II, under authority and jurisdiction to hear all final decisions of United States District Courts.

This Court has jurisdiction to issue a Writ of Certiorari under the Constitution for the United States, Article III, and U.S.C. Title 28, § 1254, to review final decisions issued by the United States Court of Appeals when said decision conflicts with decisions of other Courts of Appeal on the same subject mater.

VI. Argument on Issues

On the foregoing facts of the case, the United States Court of Appeals, Third Circuit, rendered a decision affirming U.S. District Judge Muir's decision (Middle District, PA) granting summary judgment to the named Defendants **(see R.A. 6/9/97 Brief).**

The Court was presented with the following points of law:

(1) Whether Plaintiff's claims and the record proved there were genuine issues of material fact that should have been decided at trial.

On the first point of law, wherein the District Court citing Monell stated (and Appellate Court affirmed) that Defendants School District, Schuller and Pennsylvania State Constables did not act pursuant to an unconstitutional custom and policy; hence, Pennsylvania State Constables and the East Lycoming School District could not be held liable for the actions of their employees/ agents and as such were entitled to summary judgment. Said decision conflicts with D.L. Auld Co. v. Chroma Graphics Corp., 714 F.2d 1144 (1983); Bowen v. Watkins, 699 F.2d 979 (1982); Turpin v. Mailet, 619 F.2d 196 (1980); and Kite v. Kelley, 546 F.2d 334 (10th Cir 1976).

As this Court is well aware, Plaintiffs may only have recovered from the Defendants providing their employees/ agents acts were "sanctioned or ordered" pursuant to Monell. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018.

It was admitted under deposition that the unconstitutional acts of the Defendants: wherein Robin Schuller on behalf of the School District and its Superintendent pursued and filed criminal complaints without evidence or information against the Plaintiffs in violation of State law and without the State Attorney's approval; and as a result of such act Plaintiff Brenda Lawvere and her minor children were assaulted by Constable Larry Peterman with a 12 gauge shotgun while other Constables looked on and Plaintiff Scott Lawvere was denied due process rights during arrest procedures by Pennsylvania State Constables. These acts were authorized and ordered by the East Lycoming

School District, its Superintendent, and the Pennsylvania State Constables who were and are chief policymakers **(Appendix pp 16-33).**

(2). **Whether the United States District Court, Middle District of Pennsylvania, abuse its discretion to monitor litigation and violated Plaintiffs' rights to have access to the courts, a fair hearing, and trial by jury.**

On foregoing Issue #2, the Appellate Court failed to address or rule on this issue, and it is presumed they agree with the lower Court decision which conflicts with McCray v. Maryland, 456 F.2d 1 (1972). A clerk's duties are ministerial in nature and are "inflexibly mandatory" as any of the clerk's responsibilities. In the Clerk's failure to notify Judge Muir of a year's worth of outstanding motions, Plaintiffs were hampered and their rights to have access to the courts were violated. McCray v. Maryland, supra. Defendants were never held accountable for their failure to respond to Plaintiffs' discovery requests, or for their violations of the Rules of Court, in particular the submission of unsigned pleadings.

Hence, Plaintiffs were held to a much higher standard regarding compliance with the Rules and their rights to due process were violated.

(3) **Whether the District Court abused its discretion by attempting to resolve issues of material fact, since facts on the record conflicted with factual allegations in the court's order granting summary judgment.**

On foregoing Issues #3, the Appellate Court failed to address or rule on these issues and thereby agreed with the action taken by the District Court which conflicts with the Rules of Court and Environmental Defense Fund v. Marsh, 651 F.2d 983 (1981). In the District Court's order granting summary judgment to the Defendants, the Court attempted to resolve issues of material fact in dispute: an act the court is

prevented from taking. Pursuant to F.R.C.P. Rule 56(c) the Court did not base its final decision upon the pleadings, depositions, answers to interrogatories, admissions, affidavits and evidence.

In fact, at the time summary judgment was granted, the Defendants had still not submitted interrogatories under oath, nor produced all the documents requested in discovery; hence, Petitioners were once again denied due process.

(4) **Whether the District Court abused its discretion by not compelling the Defendants to comply with Plaintiffs' discovery requests thus violating Plaintiffs' rights to due process.**

In foregoing Issue #4, the Appellate Court failed to address or rule on these issues and it is thereby presumed they agreed with the same in conflict with Williams v. Wood, 612 F.2d 982 (1980).

Compounding this issue was the fact that the clerk had failed to notify Judge Muir of outstanding motions to compel discovery (see (2) above). In so doing, the clerk violated Plaintiffs rights to have access to the courts. McCray, Williams, supra. Plaintiffs believe that it was not just a clerk, but the court's own responsibility to insure that the case was adjudicated on its merits to "ensure just, speedy and inexpensive resolutions." In the Civil Justice Expense and Delay Reduction Plan, U.S.C. Title 28, § 471, Ch. 23, Congress intended that each District Court would "monitor discovery, improve litigation management" and ensure justice. It is apparent that due to unjustifiable delays and negligence on the part of a clerk, Plaintiffs were denied due process of law and the court abused its discretion.

(5) **Whether the District Court erred in applying a legal concept in granting the Defendants immunity even though they acted under color of law and violated Plaintiffs' substantive rights.**

On Issue #5, The District Court in ordering summary judgment, granted the Defendants immunity and the Court of Appeals affirmed in conflict with Allred v. Svarczkopf, 573 F.2d 1146 (1978). The District Court never considered when coming to its final decision, whether the named Defendants were duly pursuing their duties under State statute without violating Plaintiffs' rights. In discussing the standards to determine immunity, the Court stated that the "doctrine of immunity" involves a balancing act between the rights of an individual and public officials needs. The Court must determine whether the public official carried out those duties within the scope of his office. Allred, supra. In affirming the District Court's decision, the Court of Appeals failed to discuss those standards to examine the statutes, no determination was made if the Defendants were duly exercising the authority of office and did not violate Plaintiffs' rights.

During litigation, the U.S. Court of Appeals was also presented with the following point of law in question:

Does the Clerk of the Court of Appeals have legislative or judicial authority to give out legal advice, make judicial decisions on pleadings, and to refuse to file Plaintiffs' pleadings and motions. These questions were posed to the Court of Appeals in a Motion for Judicial Determination upon which the Court failed to rule and it was therefore presumed they agreed with the Clerk's acts.

The Clerk of Court, without order from the Court of Appeals in violation of F.R.A.P. Rule 27, Rule 45, and L.A.R. Rule 27.6, ruled on Petitioners motions, gave legal advice, and denied Petitioners a fair hearing; hence violating Petitioners' rights to due process.

VII. Statement of Relief

Petitioners seek to have the Supreme court review on writ of certiorari the above mentioned order affirming

summary judgment to the named Defendants and enter judgment declaring that the respondent made an erroneous judgment in entering the order that conflicts with decisions of other United States Court of Appeals on the same subject matter and that such order is void and unenforceable. Petitioners also seek judgment stating that decisions made by other United State Court of Appeals are correct and should be approved by this Court as the controlling law, AND parties should be allowed the opportunity to have a fair and impartial hearing as well as to proceed to trial before a jury of their peers.

VIII. Reason Why Writ Should Issue

The reasons a writ or certiorari should issue herein are that:

A writ of certiorari is the only remedy available to Petitioners Lawvere to obtain a review of the order issued by Judges Cowen, Stapleton, and Lewis of the U.S. Court of Appeals, Third Circuit, where said order conflicts with decisions made by other United States Court of Appeals on the same subject matter, and to obtain a judgment declaring that order be voided and order the Respondent to grant Petitioners a fair and full hearing and to remand the action back before an impartial Judge in U.S. District Court, Middle District of Pennsylvania, for trial.

Wherefore, Petitioners Scott and Brenda Lawvere request that the Supreme Court review order of the United States Court of Appeals dated on November 14, 1997, affirming the decision by the U.S. District Court, Middle District, granting summary judgment and qualified immunity to the named Defendants in the case of Lawveres vs. East Lycoming School District, et al, Case no. 97-7215 (D.C. 4: cv 95-1515). Petitioners request an order on writ of certiorari to issue to the Respondent, the United States Court of Appeals for the Third Circuit, commanding the Respondent to set

aside and annul the order referred to and rehear the evidence and pleadings presented, in the case of Lawvere v. East Lycoming School District, et al, and remand the action back to District Court before an impartial tribunal so that it may proceed to trial and grant Petitioners any other relief the court deems just and proper.

Respectfully submitted,
Scott & Brenda Lawvere, Ambassadors for Christ, Petitioners

Scott and Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46,
Unityville, Penn. 17774,
(717)458-4522

CERTIFICATE OF SERVICE

We, Scott and Brenda Lawvere, Ambassadors for Christ, do hereby certify that the foregoing Petition for Writ of Certiorari was sent U.S. Mail, postage prepaid, to Defendants' Attorneys at the following addresses: East Lycoming School District, Robin Schuller, c/o Anthony Sherr, Sherr Joffee & Zuckerman, Esq., 200 Four Falls Corp. Ctr., P.O. Box 800, Suite 400, West Conshohocken, Pa. 19428, (610)941-5400; Pennsylvania State Constables, Gurn Weber, Larry Peterman, and Steven Litzelman, c/o J. David Smith, McCormick, Reader, Nichols, Esq., 835 W. 4th St., Williamsport, Pa. 17703, (717)326-5131; J. Howard Langdon, c/o. Edward Monsky, Fine Wyatt & Carey, 425 Spruce St., Scranton, Pa. 1805, (717)343-1197; C. Roger McRae, c/o Maryellen Gallagher, 1515 Market St., Suite 1414, Phil., Pa. 19102(215)560-6300

Done this 12 day of February, 1998.
Respectfully Submitted,
Scott & Brenda Lawvere, Ambassadors for Christ, Petitioners

Scott and Brenda Lawvere
Ambassadors for Christ
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Unityville, Penn. 17774
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

MR. AND MRS. SCOTT LAWVERE

v.

THE EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER McRAE, District Magistrate, all in their official and individual capacities; LARRY PETERMAN, Office of Constable, Schrewberry Twp.; STEVEN LITZELMAN, Office of Constable, Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.

Mr. and Mrs. Scott Lawvere,
Ambassadors for Christ,
Appellants

On Appeal From the United States District Court For the Middle District of Pennsylvania
(D.D. Civil Action No. 95-cv-1515)
District Judge: Honorable Malcom Muir

Submitted October 16, 1997

BEFORE: STAPLETON, COWEN and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is ORDERED AND ADJUDGED that the judgment of the district court entered March 19, 1997, be and is hereby affirmed.

Exhibit S1

Costs taxed against appellants.

By the court,

Walter K Stapleton
Circuit Judge

Attest:
Patricia Cohen
Acting Clerk

Dated: November 14, 1997

Exhibit S1

UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA
Respondent

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT LAWVERE AND BRENDA LAWVERE, : No. 4:CV-95-1515

Plaintiffs : Complaint filed 9/8/95

vs. : (Judge Muir)

THE EAST LYCOMING SCHOOL DISTRICT, et al., :

Defendants :

ORDER
January 29, 1997

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 8, 1995, Plaintiffs Scott and Brenda Lawvere filed this civil rights action pursuant to 42 U.S.C s. 1983 and 28 U.S.C. ss 1331 and 1343(a). The remaining Defendants in this action are a party referred to in the Lawvere's complaint as "the Pennsylvania State Constables" (hereinafter "the Constables"), the East Lycoming School District, and Robin Schuller. The Lawveres are proceeding pro se.

In their original complaint, the Lawveres allege that their constitutional rights were violated by the Defendants during state criminal proceedings against them relating to the Lawveres' refusal to enroll their children in public school. The Lawveres aver that the Constables harassed, and threatened, and assaulted Brenda Lawvere and arrested Scott Lawvere without informing him of the reason for his arrest or

informing him of his constitutional rights. The Lawveres seek damages in the amount of $50,000 from the Constables and "such sanctions as this Court deems appropriate."

The Lawveres further allege that both Schuller and the School District violated their right to practice religion as guaranteed by the First Amendment to the United States constitution as well as the Lawveres' "right of access to public information." The Lawveres contend that the School district violated their right to due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

On May 31, 1996, the Defendants filed a motion for summary judgment. On June 5, 1996, the Defendants filed a brief in support thereof and a statement of material facts. On July 16, 1996, pursuant to an extension of time, the Lawveres filed a brief in opposition and a counterstatement of material facts. No reply brief was filed and the time for doing so expired July 30, 1996. By reason of a recordkeeping error by the law clerk, this matter was overlooked until the Clerk's office issued its list of pending motions.

In their statement of material facts, the Defendants assert, and the Lawveres do not deny, the following facts which are pertinent to the Constables' summary judgment motion:

1. Defendant Robin Schuller, principal of the East Lycoming School District, instituted a private criminal complaint in the Court of District Justice C. Roger McRae based on the Lawveres' alleged violation of compulsory school attendance provisions of the Pennsylvania Public School Code.

2. The Lawveres reside within the geographic boundaries of the East Lycoming School District.

3. The Lawveres have children between the ages of 8 and 17.

4. The Lawveres have not enrolled their children in the public schools of the East Lycoming School District.

5. The Lawveres have not conducted a home-schooling program in conformance with the compulsory school education statute.

6. Schuller, who was then the principal of the Renn Elementary School, sent a letter to the Lawveres on or about September 15, 1994, informing them that they were not in compliance with the compulsory school attendance laws. Schuller informed the Lawveres that their children were required to enroll in school or that the Lawveres were required to comply with state board of education regulations regarding home instruction. The letter further indicated that the matter would be referred to a magistrate if the Lawveres did not comply with the regulations.

7. On or about September 26, 1994, Scott Lawvere met with the Superintendent of the East Lycoming School District, Edward W. Harrington, and discussed the home-schooling program.

8. On or about October 5, 194, the Lawveres sent correspondence to Superintendent Harrington summarizing their religious beliefs which they felt prevented them from complying with the compulsory school attendance statute.

9. On or about October 6, 1994, Schuller was the affiant/complainant in a summary criminal complaint filed with District Justice C. Roger McRae alleging that the Lawveres had violated the compulsory school attendance law.

10. On or about October 11, 1994, District Justice McRae mailed a notice of hearing on the complaint.

11. On or about October 19, 1994, the Lawveres filed a "Motion to Dismiss and Petition for Removal"

12. On December 4, 1994, following a hearing which the Lawveres attended, District Justice McRae found the Lawveres guilty of violating the compulsory school attendance provisions of the Pennsylvania Public School Code.

13. No appeal was taken from this determination.

14. District Justice McRae issued a warrant for the arrest of Scott Lawvere on May 4, 1995.

15. On May 19, 1995, Constables Gurn Weber, Steve Litzelman, and Larry Peterman, and Robert Cunningham executed the arrest warrant for Scott Lawvere.

16. On that date, the Constables, in uniform, arrived at the Lawveres' residence and asked Brenda Lawvere where Scott Lawvere could be found

17. On the same date, the Constables arrested Scott Lawvere at his place of employment.

18. While arresting Scott Lawvere, the Constables did not show him the arrest warrant and did the Constables did not read Scott Lawvere his Miranda rights.

Summary judgment is appropriate only when there is no genuine issue of material fact which is unresolved and the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.p. 56(c). Summary judgment is an extreme remedy and should not be granted when there is a disagreement about the facts or the proper inferences which a factfinder could draw from them. Peterson vs. Lehigh Valley Dist. council, 676 F.2d 81, 84 (3d Cir. 1982). "When a motion for summary judgment is made and supported as provided in . . .[Rule 56], "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading . . ." Fed.R.Civ.P. 56(e). The adverse party must show by affidavits, pleadings, depositions, answers to interrogatories, and admissions on file, that there is a genuine issue for trial. Id. Because summary judgment is a severe remedy, the Court should resolve any doubt about the existence of genuine issues of fact against the moving party. Ness vs. Marshall, 660, F.2d 517, 519 (3rd Cir. 1981).

The United States Supreme Court has stated that in motions for summary judgment a material fact is one which might affect the outcome of the suit under relevant substantive law. See Anderson vs. Liberty Lobby, Inc., 477 U.S. 242 (1986). The Supreme Court also stated in Anderson that a dispute about a material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. "Where the record

taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for Trial." Matsushita Electric Industrial Company. Ltd. vs. Zenith Radio Corporation, 475 U.S. 574, 587 (1986).

Initially, the moving party has a burden of demonstrating the absence of a genuine issue of a material fact. Celotex Corporation vs. Catrett, 477 U.S. 317, 323 (1986). This may be met by the moving party pointing out to the court that there is an absence of evidence to support an essential element as to which the non-moving party will bear the burden of proof at trial. Id. at 325. The non-moving party then must make a sufficient showing as to the essential elements of his or her case that a reasonable jury could find in his or her favor. Id. at 322-23.

In light of these principles, we will consider the Defendants' motion for summary judgment.

We will first address the Lawveres' claims against the School District Liability of a governmental agency under 42 U.S.C. s 1983 "may not be proven under the respondeat superior doctrine, but must be founded upon evidence that the unit itself supported a violation of constitutional rights" Bielevicz vs. Dubinon, 915, F.2d 845, 850 (3d Cir. 1990). A plaintiff must show that the governmental entity maintains an unlawful policy or custom and that such policy or custom was the proximate cause of the plaintiff's injuries. Monell vs. New York City Department of Social Services, 436 U.S. 658 (1978); Bielevicz, 915 F.2d at 850. The United States Supreme Court has stated that :

> [a] single incident of unconstitutional activity is not sufficient to impose liability . . . unless proof of the incident includes proof that it was caused by an existing, Unconstitutional municipal policy which policy can be attributed to a municipal policy maker.

Oklahoma City vs. Tuttle, 471 U.S. 808, 823-24 (1985).

The Lawveres cite no evidence that the actions of the School District were carried out pursuant to an unconstitutional policy or custom and we are aware of none.

consequently, we will grant the Defendants' motion for summary judgment as to all of the Lawveres' claims against the School District.

Count III of the Lawveres' complaint alleges that Schuller violated the Lawveres' "right to public information." This is the only count in the Lawveres' complaint which pertains to Schuller.

The Pennsylvania School Code provides that every school-aged child must attend a day school. 24 Pa.C.S.A. s13-1327(a). "Compulsory school age" is defined as the period in a child's life from the time the child's parents elect to have the child enter school, not later than at the age of eight years, until the age of 17 years. 24 Pa.C.S.A. s 13-1326. The parents of children who are of compulsory school age are required to send such children to a day school. 24 Pa.C.S.A. s 13-1327(a). Parents may enroll their children in a school operated by a church or religious body, 23 Pa.C.S.A. s 13-1327(b), or conduct a home-schooling program subject to certain regulatory requirements, 24 Pa.C.S.A. ss 13-1327(d), 13-1327.1. The Pennsylvania School Code also mandates that school district employees enforce the attendance provisions of the Code. 24 Pa.C.S.A. ss 13-1354, 13-1355.

The compulsory attendance provisions of the Pennsylvania School Code do not interfere with the First Amendment right to practice religion. Jeffery vs. O'Donnell, 702 F.Supp. 516, 518 (M.D. Pa. 1988) (Kosik,J.). The Lawveres do not cite any evidence that Schuller's actions deviated in any way from the requirements of the Pennsylvania School Code. Consequently, we will grant Schuller's motion for summary judgment as to the Lawveres' claim that Schuller violated the Lawveres' First Amendment right to practice their religion.

The Lawveres further assert that Schuller violated their "right of access to public information as secured by the First Amendment of the Bill of Rights." The Lawveres cite no authority which defines such a right within the scope of the First Amendment to the United States Constitution and we

are aware of none. The Lawveres most likely are seeking relief under Pennsylvania's "right to know" law, 65 Pa.C.S.A. s66.1, et seq. The Plaintiffs, however may not recover under 42 U.S.C. s1983 based upon an alleged violation of a state statute. Shaw by Strain vs. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990). Moreover, a plaintiff may not recover damages based upon a violation of Pennsylvania's "right to know" law. 65 Pa.C.S.A. s66.4; Wiley vs. Woods, 141 A.2d 844 (Pa. 1958). We will therefore grant Schuller's motion for summary judgment as to the Lawveres' claim based upon Schuller's alleged "right to public information."

Count VI of the Lawveres' complaint asserts the Lawveres' claims against the Constables. These claims are based upon allegations that the Constables harassed, threatened, and assaulted Brenda Lawvere and Arrested Scott Lawvere without informing him of the reason therefor or informing him of his constitutional rights. As stated earlier, liability of a governmental agency under 42 U.S.C. s 1983 "may not be proven under the respondeat superior doctrine, but must be founded upon evidence that the unit itself supported a violation of constitutional rights." Bielevicz, 915 F.2d at 850. A plaintiff must show that the governmental entity maintains an "unlawful policy or custom and that such policy or custom was the proximate cause of the plaintiff's injuries. Monell., 436 U.S. at 658; Bielevicz, 915 F.2d at 850.

The Lawveres make no assertion that the actions of the Constables were carried out pursuant to an unconstitutional policy or custom and we are aware of none. consequently, we will grant the Constables' motion for summary judgment.

On July 31, 1996, the Lawveres filed an "amended complaint" without first seeking leave of Court to do so. Because the proposed amended complaint was filed more than 20 days after the service of the Lawveres' original complaint and because responsive pleadings to the Lawveres' original complaint have been filed, the Lawveres could only amend

their complaint pursuant to leave of Court. Fed.R.Civ.P. 15(a).

Moreover, the Lawveres' amended complaint merely restates the claims set forth in their original complaint as to the East Lycoming School District and Robin Schuller. The Lawveres' amended complaint sets forth claims against the Constables which do not differ in substance from the claims set forth in the original complaint but which allege misconduct by individual Constables. The Lawveres, however, point to no evidence on the record that the Constables used force against Brenda Lawvere and we are aware of none. Furthermore, failure by police to issue Miranda warnings is not actionable under 42 U.S.C. s 1983. Warner vs. City of Lincoln, 864 F.2d 1436, 1442 (8th Cir. 1989); Cooper vs. Dupnik, 924 F.2d 1520, 1529 (9th Cir. 1991); Bennett vs. Passaic, 554 F.2d 1260, 1263 (10th Cir. 1976).

Because the Lawveres did not seek leave to amend their complaint and because the amended complaint would not survive the Defendants' motion for summary judgment or dismissal, we will strike their amended complaint from the record.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Lawveres' amended complaint is stricken from the record.

2. The Defendants' motion for summary judgment is granted.

3. The Clerk of Court shall enter judgment in favor of the Defendants and against the Lawveres no earlier than two weeks from today so as not to prejudice any person or persons who may wish to file a motion or motions prior to entry of judgment.

Muir, U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

SCOTT AND BRENDA LAWVERE

v.

EAST LYCOMING SCHOOL DISTRICT, ET AL.

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENSBERG, SCIRIICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE and RENDELL, Circuit Judges

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

Walter K. Stapleton
Circuit Judge

Dated : Dec 22 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

MR. AND MRS. SCOTT LAWVERE

v.

THE EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER McRAE, District Magistrate, all in their official and individual capacities; LARRY PETERMAN, Office of Constable, Schrewberry Twp.; STEVEN LITZELMAN, Office of Constable, Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.

Mr. and Mrs. Scott Lawvere,
Ambassadors for Christ,
Appellants

On Appeal From the United States District Court For the Middle District of Pennsylvania
(D.D. Civil Action No. 95-cv-1515)
District Judge: Honorable Malcom Muir

Submitted October 16, 1997

BEFORE: STAPLETON, COWEN and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ORDERED AND ADJUDGED that the judgment of the district court entered March 19, 1997, be and is hereby affirmed.

Costs taxed against appellants.

By the court,

Walter K Stapleton
Circuit Judge

Attest:
Patricia Cohen
Acting Clerk

Dated: November 14, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

MR. AND MRS. SCOTT LAWVERE

v.

THE EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER McRAE, District Magistrate, all in their official and individual capacities; LARRY PETERMAN, Office of Constable, Shrewberry Twp.; STEVEN LITZELMAN, Office of Constable, Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.

Mr. and Mrs. Scott Lawvere,
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District Judge: Honorable Malcom Muir

Submitted October 16, 1997

BEFORE: STAPLETON, COWEN and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ORDERED AND ADJUDGED that the judgment of the district court entered March 19, 1997, be and is hereby affirmed.

Costs taxed against appellants.

By the court,

Walter K Stapleton
Circuit Judge

Attest:
Patricia Cohen
Acting Clerk

Dated: November 14, 1997

Costs Taxed In Favor of Appellees Pennsylvania State Constables, Larry Peterman, Steven Litzelman and Gurn Weber as follows;

Brief. $119.00
TOTAL $119.00

Certified as a true copy and issued in lieu of a formal mandate on 12/30/97
Teste: P. Douglas Sisk
Clerk, U.S. Court of Appeals for the Third Circuit.

CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment I - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

Amendment VIII - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV para 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Pennsylvania Rules of Court, Criminal Rule 106 - (a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the Attorney for the Commonwealth:

(1) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

Appeal No: 97-7215
Case No: 4:CV-95-1515

SCOTT AND BRENDA LAWVERE,
Ambassadors for Christ, **Appellants**

vs.

EAST LYCOMING SCHOOL DISTRICT
PRINCIPAL ROBIN SCHULLER
PENNSYLVANIA STATE CONSTABLES
CONSTABLE GURN WEBER
CONSTABLE LARRY PETERMAN
CONSTABLE STEVEN LITZELMAN
DISTRICT MAGISTRATE McRAE, AND
ATTORNEY HOWARD LANGDON,
In their official and individual capacities,

Appellees

APPELLANTS' PETITION FOR REHEARING

This is a Petition for Rehearing of a final order from the Third Circuit Court of Appeals, dated November 14, 1997 affirming the lower court's final order in favor of the defendants/appellees issued by Federal District Judge Malcom Muir Middle District of Pennsylvania

Prepared and Filed By: Scott and Brenda Lawvere,
Appellants, Pro Se ,Ambassadors for Christ
P.O. Box 46, Unityville, PA 17774,(717)-458-4522

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SUMMARY OF ARGUMENT

Plaintiffs brief will show that the U.S. District Court of Appeals overlooked the following facts and evidence on record, to wit:

Robin Schuller, Principal employed by the East Lycoming School District did not act alone in filing a private criminal complaint against the Plaintiffs. Schuller was authorized by the East Lycoming School District and School Superintendent Edward Harrington to file criminal charges against the Plaintiffs without evidence or personal knowledge of an infraction or wrongdoing.

Since Schuller acted with authorization and approval of the School District's policymakers, she and they are liable to the Plaintiffs for deprivation of rights. The same applies to the Pennsylvania State Constables.

Defendant Pennsylvania State Constables, a "defacto" municipal corporation was created by Captain Gurn Weber using the collective powers of his office and that of other Constables. As creator, he is the policymaker of the Pennsylvania State Constables; as supervisor he is responsible for the actions of the Constables under his immediate supervision. Captain Weber also failed to properly supervise and train Constable Litzelman and Peterman in procedures when making an arrest with and without a warrant as evidenced by the deprivations suffered by the Lawvere family.

District Justice McRae, relying upon his own discretion and acting outside the scope of his office, did deny and violate Plaintiffs' rights to due process of law.

All of the named Defendants made conscious decisions to take a course of conduct from alternative choices and in taking action, violated the Lawvere family's rights.

ARGUMENT

I. DOES THE EAST LYCOMING SCHOOL DISTRICT BEAR MUNICIPAL LIABILITY FOR ACTIONS OF ROBIN SCHULLER?

Plaintiffs incorporate herein by reference their Initial Appeal Brief.

1. In affirming the judgment of the U.S. District Court of the Middle District, the Third Circuit Court of Appeals has agreed that the East Lycoming School District had no responsibility for the actions of Defendant Robin Schuller, even though evidence on the record shows otherwise.

   Citing Monell, District Judge Muir argued that the Plaintiffs "cited no evidence" that the actions of the East Lycoming School District "Were carried out pursuant to an unconstitutional policy and custom", hence East Lycoming School District could not be responsible even though pursuant to testimony of School Board President Jane DeWire and School Superintendent Harrington, the East Lycoming School District had knowledge of and approved the filing of a private criminal complaint against the Lawveres by Schuller.

2. The precedent of "official policy" in Monell was to separate acts of employees from their municipal employers. As a result of Monell, Plaintiffs may only recover from the Defendants providing Schuller's acts were "sanctioned or ordered." Monell v. New York City Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018.

   Robin Schuller, Principal of Renn Elementary School filed a private criminal complaint against Scott

and Brenda Lawvere on October 6, 1994 **(N.T. Schuller, page 6, lines 4-12)**; *she did not act alone*. Schuller conferred with Superintendent Harrington who authorized the filing of the complaint **(N.T. Schuller, p.8, lines 2-9; N.T. Harrington p. 18, lines 15-20)**. When Schuller filed the private criminal complaint, she admittedly had no evidence of violation **(N.T. Schuller, p. 14, lines 13-15)**. According to Superintendent Harrington, Principals have no authority to file private criminal complaint without evidence **(N.T. Harrington, p. 9, lines 11-13 and 23).**

Therefore, based upon their own testimony, Harrington, Schuller and the East Lycoming School District violated their own policies and created a new set of policies.

3. The East Lycoming School District is liable for single decisions made by Superintendent Harrington. Every "act" taken by Harrington and East Lycoming School District constituted official policy. Owen v. City of Independence, 445 U.S. 622, 63 L.Ed.2d 673, 100 S.Ct. 1398 (1980), even if that policy is used only once or more than once.

4. Harrington, as Superintendent is responsible for the day. to day operations of the East Lycoming School District **(N.T. Harrington, p. 6 lines 2-3 and lines 16-17)**. He directs the administration that implements school board policy **(N.T. Harrington, p. 8, lines 14-16)**. Therefore, he is the chief decision/policymaker for the East Lycoming School District.

5. East Lycoming School District and Harrington recommended and authorized Schuller's filing the criminal complaint without the District Attorney's approval in violation of State law. Harrington, although having the final say, did not act alone in his selection of

"choices and decisions." Bowen v. Watkins, 669 F.2d 979 (1982). **(N.T. Harrington p. 24, lines 12-23)**[1] . **(N.T. Harrington, p. 16, lines 20-25; p. 17, lines 1-6)**[2]

East Lycoming School District and Harrington are liable for violations of Plaintiffs civil rights since they made

a "deliberate choice to follow a course of action" from alternatives because they are responsible for establishing final school policy regarding school attendance and decisions to take legal action against those allegedly not in compliance. Pembaur v. Cincinnati, 475 U.S. 469, 89 L.Ed.2d 452, 106 S.Ct. 1292. **(N.T. DeWire, p. 15, lines 3-7)**.

6. According to State law, private criminal complaints must accompany evidence and be given to the District Attorney's office for approval before he can begin to prosecute the case. Pennsylvania Rules of Court, Criminal Procedure, Rule 133. A complaint must accompany facts and evidence to give a District Attorney sufficient information to make a decision whether or not to permit criminal proceedings. Corn v. Muroski, A.2d 1312, 352 Pa.Super 15, Super 1986.

It would have been the District Attorney's responsibility to decide whether or not to prosecute. The decision to proceed to prosecute did not belong to the School District, Mr. Harrington, or Robin Schuller. In fact, the School District and Harrington waived any rights they may have had to bring an action for alleged

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[1] "East Lycoming School District approves all legal actions."

[2] East Lycoming School Board "does not have authority" to make "determinations" regarding evidence; only the Superintendent of Schools.

violation because they violated State law and failed to get the District Attorney's approval. Pokrandt v. Shields, E.D. Pa 1991, 773 F.Supp 758.

As a result of the actions of Robin Schuller, Edward Harrington, and the School District, Plaintiffs rights including but not limited to their rights to due process were violated, without any tangible evidence of wrongdoing. Thus in one act, East Lycoming School District and Edward Harrington as ultimate policymakers are responsible for actions of Robin Schuller, who did not act alone when they violated Plaintiffs rights to due process and right to have equal access to the courts.

Summary judgment should not have been granted since the East Lycoming School District, Harrington, and Schuller acted in concert to deprive Plaintiffs of their rights. Plaintiffs should have been given the opportunity to have a fair hearing and to present the facts surrounding the criminal complaint before a jury of their peers.

II. DID PRINCIPAL ROBIN SCHULLER VIOLATE PLAINTIFFS' RIGHTS INCLUDING BUT NOT LIMITED TO DUE PROCESS?

7. It is impossible for the Lawveres to have violated the Pennsylvania School Code unless they had also violated the regulation implementing the School Code.

Defendant Schuller admitted she depended upon "knowledge of school attendance" and "what is expected of policy and the Pennsylvania School Code" in filing a private criminal complaint.**(N.T. Schuller, p. 17 lines 15-19).** Yet, the East Lycoming School District does not have a policy for teaching children at home according to School Superintendent Harrington. **(N.T. Harrington, p. 26 lines 6&7, 10-11).**

8. Harrington testified that his only "motivation" in compelling Schuller to file was to "insure school district and staff were in "compliance" with compulsory education laws or home schooling regulations." **(N.T. Harrington, p. 56, lines 4-10** [emphasis added]

According to regulations implementing 24 Pa.C.S.A. 13-1327, there are no provisions concerning compulsory attendance of home schoolers, nor are there any criminal provisions for alleged school absence. In regards to 24 Pa.C.S.A. 13-1327, there are no implemented rules or regulations concerning home schoolers or any fine or penalty for alleged absence by either homeschoolers or children enrolled in district schools. Therefore, Plaintiffs could not have violated 24 Pa.C.S.A. 13-1327 since they did not violate the regulation. United States v. Reinis, 794, F.2d 506, 508 (9th cir 1986); United States v. Murphy, 809 F.2d 1427, (9th cir 1987). **[See Appendix Item #60 Plaintiffs Objection to Summary Judgment & #62 Motion for Rehearing]**.

Acting with the full knowledge and approval of the East Lycoming School District, Superintendent Harrington and Principal Robin Schuller interfered with and violated Plaintiffs' rights, including but not limited to their right to due process, the right to be free from harassment and frivolous litigation, the right to teach their children, as well as their right to worship their Creator which includes following his laws and commandments.

The Defendants are liable to the Plaintiffs for their willful, unlawful acts. As a result of decisions and conscious "choices", Brenda Lawvere and her children were assaulted by Constables, and the Lawvere family suffered numerous rights deprivations.

Summary judgment should not have been granted since genuine issues of material fact were in existence; the Lawveres should have been allowed to proceed to trial.

III. IS MUNICIPAL ENTITY PENNSYLVANIA STATE CONSTABLES' LIABLE FOR THE ACTS AND FAILURE TO ACT OF INDIVIDUAL CONSTABLES?

A. Municipal Corporation "Pennsylvania State Constables

9. "Municipal policy" is a manner in which liability can be "traced back" to policymakers. A single act by a "high level officer can be municipal policy . . if that officer is placed highly enough to be an authorized decision maker."Williams v. City of Chicago, 658 F.Supp 147 (N.D.Ill 1987).

10. Captain Gurn Weber, Constable of Old Lycoming Township, used his powers of office and created a "de facto" municipal corporation known as "Pennsylvania State Constables". **(See exhibits; Pictures of Marquee; Excerpts from Phone Book Exhibit #30, p. 162 Exhibits)**.

This single decision to create "Pennsylvania State Constables" using the collective powers of the individual Constables was without legislative authority.

11. Act 147-1990, Laws of Pennsylvania creating the Office of Constable was repealed by the Supreme Court of Pennsylvania as "unconstitutional". In re Act 147 of 1990, 598 A.2d 985 (Pa. 1991). Upon repeal, the legislators of the Commonwealth neglected to re-enact new legislation and implement new regulations providing for responsibilities, duties, and enforcement authority of

state constables. As a result, the office of constables in the Commonwealth is a "de facto" office. Therefore, when Captain Weber created "Pennsylvania State Constables", he did so upon his own prerogative.

12. Weber employs a staff and acts as immediate supervisor of Constables within Lycoming County. **(N.T. Litzelman, p. 12 lines 19-23; p. 4, lines 12-13).**

Pursuant to government offices in Harrisburg, Constables do not report to any "agency" or "department of government". But, pursuant to Constable Litzelman, Mr. Weber is responsible for the proper supervision of Constables within the County.

13. Before a municipal corporation can be created, officers/creators must file a charter and articles of incorporation with the Secretary of the Commonwealth. Certificates of Incorporation issued by the Secretary of the Commonwealth is "conclusive evidence" that the municipal corporation exists. Upper Dublin Township Authority v. Piszek, 420 Pa. 536, 218 A.2d 331. Yet when Plaintiffs contacted the Secretary's office, no record was found of any municipal corporation known as "Pennsylvania State Constables." The only evidence that it does exist are the photographs that the Plaintiffs have presented into evidence.

B. Assault by Constable Peterman and Constables failure to Act

14. On May 19, 1997, Captain Weber and Constables Litzelman, Peterman, and Cunningham arrived at the Plaintiffs' house as representatives of "Pennsylvania State Constables". When Constable Peterman assaulted Brenda Lawvere and her children with a loaded 12 gauge shotgun, Captain Weber "acquiesced" in Plaintiffs constitutional deprivations. As chief policymaker, he and

the "Pennsylvania State Constables" are liable for those deprivations. Kite v. Kelley, 546 F.2d 334, (10th Cir. 1976). Turpin v. Mailet, 619 F,2d 196 (1980). **(N.T. Litzelman, p. 16 lines 20-p. 17 line 2).**

15. Litzelman, a non-supervisory officer, neglected his duty to enforce the law and violated his oath of office when he failed to stop Constable Peterman from assaulting Brenda Lawvere and her children with the loaded 12 gauge shotgun. Wilkinson v. Ellis, 484 F.Supp 1072, 1086 (E.D.Pa. 1980).

16. Peterman's assault and misconduct during performance of his duties is actionable and proper under 42 U.S.C. 1983. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 496 (1961). Weber, Litzelman, and Pennsylvania State Constables are liable for Peterman's assault as a result of "inaction" and "indifference".

There are no professional or educational requirements to become elected to the position of Constable. Although Constables do attend firearms classes, there seems to be no formal instruction regarding procedure. Even Constable Litzelman was unsure of the training requirements of Constables. **(N.T. Litzelman, p. 10 lines 1-page 11, line 2).**

Constable Weber as chief policymaker for "Pennsylvania State Constables" and supervisor of individual Constables had the responsibility to properly inform, train, and supervise the Constables under his supervision and failed to do so.

As a result of Peterman's actions and Constables failure to act, Brenda Lawvere and her children were assaulted and their rights were violated. Pennsylvania State Constables, and the individual Constables are liable to Brenda Lawvere and her children for those rights deprivations.

C. Arrest and Interrogation of Plaintiff Scott Lawvere

17. Constable Weber, when taking Scott Lawvere into custody failed to notify him of the reason for his arrest, failed to read and notify him of his Miranda rights before interrogating him, and failed to show him a copy of the alleged warrant for his arrest. **(Affidavit:Scott Lawvere)**. Constable Litzelman, a trained police officer who also was a Constable, assisted in the arrest of Scott Lawvere, yet had no idea whether or not he was required to notify him of his Miranda rights. **(N.T. Litzelman, p. 25, lines 10-14).**

Captain Weber violated Scott Lawvere's rights including but not limited to the right to know the reason for his arrest and the right to see a warrant. Weber as supervisor, should have and could have known that he was responsible for the proper training and supervision of Constable Litzelman. Even though Litzelman testified he had made numerous "arrests" on warrants, he had no idea of the proper procedure to make such arrests. **(N.T. Litzelman, p. 24, lines 2-14)**.

Constable Weber and Pennsylvania State Constables had already created unconstitutional policy in creation of a "de facto" corporation without legislative authority; secondly, they created policy by their failure to stop Constable Peterman's assault of Brenda Lawvere and her minor children, and tacitly approved of Constable Peterman's actions. Thirdly, unconstitutional policy was created by Weber's failure to notify Scott Lawvere of the reason for his arrest and to preserve his rights before interrogating and arresting him.

Therefore, Captain Weber, Supervisor and creator of "Pennsylvania State Constables" is liable for deprivations of Scott Lawvere's rights. Capt. Weber and Defendant Constables can be held liable for "one act" although several acts actually took place. Weber made a

conscious and "deliberate choice" to follow his course of action made from various alternatives, thereby creating unconstitutional custom and policy. City of Oklahoma v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985).

Summary judgment should not have been granted since issues of fact surround the rights deprivation of the Plaintiffs and the assault upon Brenda Lawvere and her children by Defendant Constables.

IV. IS DEFENDANT LANGDON CULPABLE IN THE ACTIONS OF THE SCHOOL DISTRICT, HARRINGTON, AND ROBIN SCHULLER?

18. When Plaintiffs were prosecuted criminally for alleged school absence, the Commonwealth was represented in the criminal action by attorney J. Howard Langdon, who had also at one time represented the Lawveres. Mr. Langdon is not a public prosecutor, but is a private attorney that has been retained by the East Lycoming School district for the past 10 years **(N.T. Harrington p.20, lines 23-25, p. 21, lines 1-4)**.

19. Mr. Harrington conferred with attorney Langdon before criminal charges were filed against Scott and Brenda Lawvere **(N.T. Harrington, p. 19 lines 25-p. 20 lines 14)**. Attorney Langdon as solicitor for the East Lycoming School District is responsible for enforcing the Pennsylvania School Code and East Lycoming School District policies **(N.T. DeWire, p. 19, lines 1-4)**. According to Board Member Myers, Langdon advised the School District on legalities of the School Code; it was also his responsibility to insure policies are accurate and enforced properly **(N.T. Myers, p. 12, lines 4-6; p. 12, lines 17-22).**

20. Therefore, Langdon is involved in day to day operations of the East Lycoming School District and is involved in decision making regarding policy. In Pembaur, supra, the State prosecutor was held to be an official "authorized to establish policy" since the officers in question relied upon the Prosecutors legal advice in affecting the service of third party warrants. In serving those warrants, the defendants violated Pembaur's rights to be free from illegal search and seizure. Unlike Pembaur, Harrington and Langdon chose a course of conduct in authorizing the filing and prosecution of the Lawveres upon a private criminal complaint without the District Attorney's authorization and approval in violation of State law. It is only the District Attorney who is authorized to investigate and prosecute criminal cases, not the Defendants.

Therefore, there is an issue of material fact regarding the culpability of Attorney Langdon in the investigation and prosecution of the Plaintiffs. Summary judgment should not have been granted and Defendant Langdon should not have been dismissed.

V. IS DISTRICT MAGISTRATE McRAE LIABLE FOR HIS ACTS OUTSIDE THE SCOPE OF HIS OFFICE UNDER COLOR OF LAW?

21. The record is filled with evidence that District Magistrate McRae overstepped the scope of his office and violated Plaintiffs' rights including but not limited to the right to have access to information. McRae knowingly and willingly refused Plaintiffs access to their court files in State case NT-0000619-94 and NT-0000620-94 which was documented by clerks in his office in the court docket. **(Exhibit XX - see Table of Contents #13)**.

McRae also violated his Oath of Office to the people and his duties as a Magistrate. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 @ 384 (1947). McRae should have known he had a duty and obligation to protect the rights of the Plaintiffs in the alleged State action. Plaintiffs brought to his attention the deficiencies of process and in the School District's claims; in return they were threatened, harassed and told that if the Plaintiffs wanted to review the file they would have to "subpoena' it. When McRae stepped outside the scope of his office, he made himself liable in his individual capacity and is liable to the Plaintiffs for those actions.

Since genuine issues of material fact existed, McRae should not have been dismissed from the action and summary judgment should not have been granted. Plaintiffs case should have been allowed to proceed to trial before a jury of their peers.

CONCLUSION

22. There is sufficient evidence on the record showing that there were genuine issues of material fact and Plaintiffs case should have proceeded before a jury of their peers. Robin Schuller did not act alone, but upon the approval and authorization of the East Lycoming School .District, Howard Langdon, and Superintendent Harrington when she filed a private criminal complaint against the Plaintiffs without evidence and without approval.

Captain Gurn Weber and other Constables created a municipal corporation known as "Pennsylvania State Constables" without legislative authorization and tacitly approved of and authorized the rights deprivations suffered by the Lawvere family.

District Magistrate McRae knowingly and willfully denied Plaintiffs access to their court file and public information.

All of the Defendants have made conscious decisions to take a course of action from "alternative choices". All unconstitutional acts which deprived and injured the Plaintiffs were done with the approval and authorization of policymakers, be it Pennsylvania State Constables, East Lycoming School District, or District Justice McRae. The events surrounding these acts, even the acts themselves were denounced by the Defendants who never presented preponderance of evidence or any unquestionable evidence before the courts of their liability.

Based upon the evidence in the record, the case should have been allowed to proceed to trial before a jury and the Plaintiffs should have been granted their day in court. Plaintiffs respectfully request that this Court rehear and overturn its decision of November 14, 1997, and allow Plaintiffs case to proceed to trial.

Respectfully Submitted,

_____

Scott and Brenda Lawvere
Ambassadors for Christ
P.O. Box 46,Unityville, PA 17774
(717)-458-4522

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT LAWVERE AND BRENDA LAWVERE,	: No. 4:CV-95-1515
Plaintiffs	: Complaint filed 9/8/95
vs.	: (Judge Muir)
THE EAST LYCOMING SCHOOL DISTRICT, et al.,	:
Defendants	:

ORDER
February 13, 1997

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On January 29, 1997, we issued an order granting the remaining Defendants' motion for summary judgment and directing that judgment be entered today. When that judgment is entered, all claims of the Plaintiffs will have either ben dismissed or will have been the subject of summary judgment in favir of all of the Defendants.

Each law clerk files with the judge each Friday a report which lists all motions ripe for decision for which he or she has the obligation of preparing the first draft of an order relating to the motion. The law clerk also specifies on each weekly report the number of days each motion has been ripe.

The law clerk responsible for the first draft relating to motions in this case filed weekly reports as to motions ripe but did not set forth the below-mentioned motions on his reports.

The undersigned deeply regrets that the above motions were not previously acted upon. The purpose of this order is

to deny as moot all motions in this case which are still pending. They are listed below.

NOW, THEREFORE, IT IS ORDERED THAT:

The following motions filed by the Lawveres are denied as moot:

Motion for Reconsideration filed 6/3/96
Motion to Compel DeWire, filed 6/10/96
Motion to Compel Schuller, filed 6/10/96
Motion to Compel East Lycoming School Dist., filed 6/10/96
Motion for Partial Summary Judgment, filed 8/2/96
Motion for Sanctions against Schuller filed 8/2/96
Motion for Sanctions against Constables filed 8/2/96
Motion to Compel Harrington filed 8/2/96
Motion for extension of time filed 8/2/96
Motion to Compel Constables filed 8/12/96
Motion to Compel Schuller filed 8/12/96
Motion to Compel East Lyco. Sch. Dist. filed 8/12/96
Motion for Default Judgment against Weber filed 8/29/96
Motion for Default Judgment against Litzelman filed 8/29/96
Motion for Default Judgment against Peterman filed 8/29/96
Motion for Hearing filed 10/2/96
Motion for Extension of Time filed 10/2/96
Motion to Compel Peterman filed 10/23/96
Motion for Sanctions filed 10/23/96
Motion to Compel Weber filed 10/23/96
Motion to Strike Brief filed 12/2/96 (doc 210)
Motion to Strike Brief filed 12/2/96 (doc 211)

Muir, U.S. District Judge

GENERAL DOCKET FOR Third Circuit Court of Appeals

Court of Appeals Docket #: 97-7215 Filed: 4/30/97
Nsuit: 3440 Civil Rights: Other
Lawvere, et al v. East Lycoming Sch, et al
Appeal from: U.S. District Court for the Middle District of Pennsylvania
Lower court information:
District: 0314-3 : 95-cv-01515
Date Filed: 9/8/5
Date order/judgment: 3/19/97
Date NOA filed: 4/16/97
Fee status: paid Prior cases: None
Current cases: None
Docket as of August 16, 1997 3:35 am Page 1
Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

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BRENDA LAWVERE
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v.

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Sherr, Joffe & Zuckerman

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C. ROGER MCRAE, District Magistrate, all in their oficial and individual capacities
MaryEllen Gallagher
FTS 560-6315
215-560-6300
[COR NTC sta]

Appellee

Supreme Court of Pennsylvania
Administrative Office of PA
Courts
1515 Market Street
Suite 1414
Philadelphia, PA 19102

LARRY PETERMAN, Office of Constable, Schrewberry Twp.
Appellee [COR NTC ret]

J. David Smith (See above)
R. Matthew Patch (See above)
[COR NTC ret]

STEVEN LITZELMAN, Office of Constable Jersey Shore Borough
Appellee [COR NTC ret]

J. David Smith (See above)
R. Matthew Patch (See above)
[COR NTC ret]

GURN WEBER, Office of Old Lycoming Twp.
Appellee [COR NTC ret]

J. David Smith Constable (See above)
R. Matthew Patch (See above)
[COR NTC ret]

SCOTT LAWVERE; BRENDA LAWVERE
Appellants

v.

E LYCOMING SCH DIST; PA STATE CONSTABLES; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER MCRAE, District Magistrate, all in their oficial and individual capacities; LARRY PETERMAN, Office of Constable, SchrewberryTwp.; STEVEN

LITZELMAN, Office of Constable Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.
Appellees

4/30/97 CIVIL CASE DOCKETED. Notice filed by Mr. and Mrs. Scott Lawever, Ambassadors for Christ □ (cpm)

4/30/97 TRANSCRIPT PURCHASE ORDER (PART I), no proceedings in District Court. (cpm)

4/30/97 BRIEFING NOTICE ISSUED. Appellant brief and appendix due 6/9/97, . (cpm)

5/2/97 APPEARANCE from Attorney MaryEllen Gallagher on behalf of Appellee C. Roger McRae, filed. (mmb)

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5/12/97 APPEARANCE from Attorney Anthony R. Sherr on behalf of Appellees East Lycoming School District & Robin Schuller, filed. (mmb)

5/12/97 DISCLOSURE STATEMENT on behalf of Appellees East Lycoming School District & Robin Schuller, filed. (mmb)

6/9/97 BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere Copies: 10, Delivered by mail, filed. Certificate of service date 6/9/97. (cpm)

6/9/97 APPENDIX on behalf of Appellants Scott Lawvere and Brenda Lawvere Copies: 4 Volumes: 2, Delivered by mail, filed. Certificate of service date 6/9/97. (cpm)

6/30/97 BRIEF on behalf of Appellee C. Roger McRae, Pages: 15, Copies: 10, Delivered by mail , filed. Certificate of Service date 6/30/97. (cpm)

7/1/97 RECORD, filed. (cpm)

7/2/97 Notice of telephone request. 10 labels stating the appeal arose from the Middle District of PA instead of from the Eastern District of PA were req from Appellee Justice Roger McRae. Response due in 3 days. (cpm)

7/8/97 BRIEF on behalf of Appellee J. Howard Langdon, Pages: 12, Copies: 10, Delivered by mail, filed. Certificate of Service date 7/7/97. (tap)

7/9/97 BRIEF on behalf of Appellee E Lycoming Sch District & Robin Schuller. Pages: 18, Copies: 10, Delivered by mail, filed. Certificate of date 7/9/97. (tap)

7/10/97 Requested motion for leave to file appendix on behalf of Lycoming Sch Dist and Schuller, white front and back covers for appendix, and certificate of bar membership for brief. Response due in 3 days. (tap)

7/11/97 BRIEF on behalf of Appellees PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber, Pages: 12, Copies: 10, Delivered by mail, filed. Certificate of Service date 7/11/97. (tap)

7/11/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf Lycoming Sch Dist and Schuller, covers for appendix, bar membership. (tap)

7/11/97 MOTION by Appellees Robin Schuller & East Lycoming School District to Designate Exhibits for Inclusion in Appendix, ZZ#CONSTRUED ZZ#AS a motion to file a supplemental appendix, filed. Answer due 7/21/97. Certificate of Service dated 7/11/97. (mmb)

7/14/97 Notice of telephone request to submit motion for leave to file appendix attached to brief on behalf of Langdon. Response due in 3 days. (tap)

7/14/97 REPLY BRIEF on behalf of Appellant Scott Lawvere, Appellant Brenda Lawvere, Copies: 10, Delivered by mail, filed. Certificate of service date 7/14/97. (wab)

7/16/97 Requested motion for leave to file apx attached to brief on behalf of PA State Constables et al. Response due in 3 days. (tap)

7/21/97 MOTION filed by Appellee J. Howard Langdon to designate exhibits for inclusion in appendix construed as a motion for leave to file supplemental appendix. Answer due 7/28/97. Certificate Service dated 7/18/97. (ctc)

7/21/97 COMPLIANCE RECEIVED- Motion for leave to file exhibits attached to appellee's brief on behalf of Langdon. (tap)

7/23/97 MOTION by Appellants to Strike Motion by Appellees, East Lycoming School District & Schuller, to Designate Exhibits for Inclusion in Appendix, ZZ#TREATED ZZ#AS a response to motion to designate exhibits, filed. Certificate of service dated 7/21/97. (mmb)

7/23/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to Langdon's Brief. Delivered by mail, received. Certificate of service date 7/21/97. (cpm)

7/25/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to East Lycoming School District and Schuller's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/23/97. (cpm)

7/28/97 APPEARANCE from Attorney R. Matthew Patch on behalf of Appellees PA State Constables, Larry Peterman, Steven Litzelman and Gurn Weber, filed. (cpm)

7/28/97 MOTION filed by Appellees PA State Constables, Larry Peterman, Steven Litzelman and Gurn Weber to file supplemental appendix. Answer due 8/4/97. Certificate of Service dated 7/25/97. (cpm)

7/28/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf of PA Constables. (tap)

7/28/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to Pennsylvania Sate Constable's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/25/97. (cpm)

7/29/97 ORDER (Clerk) granting motion to file supplemental appendix by Appellee, J. Howard Langdon, referring to the merits panel the motion by appellants to strike appellees' motion, and motion by appellees' Robin Schullter

and East Lycoming School District to file supplemental appendix. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (ctc)

7/29/97 SUPPLEMENTAL APPENDIX on behalf of J. Howard Langdon, filed per Clerk's 7/29/97 Order. Attached to brief. (tap)

8/1/97 AMENDED MOTION filed by Appellees PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber to file supplemental appendix. . Answer due 8/8/97. Certificate of Service dated 7/29/97. (cpm)

8/11/97 MOTION filed by Appellant to reconsider order dated 7/29/97 Answer due 8/18/97. Certificate of Service dated 8/8/97. (cpm)

GENERAL DOCKET FOR Third Circuit Court of Appeals
Court of Appeals Docket #: 97-7215 Filed: 4/30/97
Nsuit: 3440 Civil Rights: Other
Lawvere, et al v. East Lycoming Sch, et al
Appeal from: U.S. District Court for the Middle District of Pennsylvania

Lower court information:

District: 0314-3 : 95-cv-01515
Date Filed: 9/8/5
Date order/judgment: 3/19/97
Date NOA filed: 4/16/97

Fee status: paid
Prior cases: None
Current cases: None
Docket as of January 3, 1998 3:22 am Page 1
Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

SCOTT LAWVERE Scott Lawvere
Appellant 717-458-4522
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BRENDA LAWVERE Brenda Lawvere
Appellant 717-458-4522
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v.

E LYCOMING SCH DIST Anthony R. Sherr
Appellee FTS 834-7679

610-941-5400
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Sherr, Joffe & Zuckerman
200 Four Falls Corporate Center
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PA STATE CONSTABLES — J. David Smith
Appellee — FTS 326-5529
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Williamsport, PA 17701

ROBIN SCHULLER, Principal — Anthony R. Sherr
Appellee — (See above)
[COR NTC ret]

J. HOWARD LANGDON, Attorney — Edward A. Monsky
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Scranton, PA 18501-0590

C. ROGER MCRAE, District — MaryEllen Gallagher
Magistrate, all in their — FTS 560-6315
oficial and individual — 215-560-6300
capacities — [COR NTC sta]

Appellee
Supreme Court of Pennsylvania
Administrative Office of PA Courts
1515 Market Street
Suite 1414
Philadelphia, PA 19102

LARRY PETERMAN, Office of Constable, Schrewberry Twp.
Appellee
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(See above)
[COR NTC ret]
R. Matthew Patch
(See above)
[COR NTC ret]

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(See above)
[COR NTC ret]
R. Matthew Patch
(See above)
[COR NTC ret]

GURN WEBER, Office of Constable Old Lycoming Twp.
Appellee
J. David Smith
(See above)
[COR NTC ret]
R. Matthew Patch
(See above)
[COR NTC ret]

SCOTT LAWVERE; BRENDA LAWVERE

Appellants

v.

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Appellees

Docket as of January 3, 1998 3:22 am Page 4
Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

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7/11/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf Lycoming Sch Dist and Schuller, covers for appendix, bar membership. (tap)

7/11/97 MOTION by Appellees Robin Schuller & East Lycoming School District to Designate Exhibits for Inclusion in Appendix, ZZ#CONSTRUED ZZ#AS a motion to file a supplemental appendix, filed. Answer due 7/21/97. Certificate of Service dated 7/11/97. (mmb)

7/11/97 SUPPLEMENTAL APPENDIX ATTACHED TO BRIEF on behalf of PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber. Copies: 12 Volumes: 1

Delivered by mail, received. Certificate of service date 7/11/97. (See Clerk order dated 8/25/97) (cpm)

7/14/97 Notice of telephone request to submit motion for leave to file appendix attached to brief on behalf of Langdon. Response due in 3 days. (tap)

7/14/97 REPLY BRIEF on behalf of Appellant Scott Lawvere, Appellant Brenda Lawvere, Copies: 10, Delivered by mail, filed. Certificate of service date 7/14/97. (wab)

7/16/97 Requested motion for leave to file apx attached to brief on behalf of PA State Constables et al. Response due in 3 days. (tap)

7/21/97 MOTION filed by Appellee J. Howard Langdon to designate exhibits for inclusion in appendix construed as a motion for leave to file supplemental appendix. Answer due 7/28/97. Certificate Service dated 7/18/97. (ctc)

7/21/97 COMPLIANCE RECEIVED- Motion for leave to file exhibits attached to appellee's brief on behalf of Langdon. (tap)

7/23/97 MOTION by Appellants to Strike Motion by Appellees, East Lycoming School District & Schuller, to Designate Exhibits for Inclusion in Appendix, ZZ#TREATED ZZ#AS a response to motion to designate exhibits, filed. Certificate of service dated 7/21/97. (mmb)

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7/25/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to East Lycoming School District and Schuller's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/23/97. (cpm)

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7/28/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf of PA Constables. (tap)

7/28/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to Pennsylvania Sate Constable's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/25/97. (cpm)

7/29/97 ORDER (Clerk) granting motion to file supplemental appendix by Appellee, J. Howard Langdon, referring to the merits panel the motion by appellants to strike appellees' motion, and motion by appellees' Robin Schullter and East Lycoming School District to file supplemental appendix. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (ctc)

7/29/97 SUPPLEMENTAL APPENDIX on behalf of J. Howard Langdon, filed per Clerk's 7/29/97 Order. Attached to brief. (tap)

7/30/97 Document entitled "Appellant's Motion to Strike Appellee Howard Langdons Motion to Designate Exhibits for Inclusion in Appendix construed as a RESPONSE filed by Appellants Scott Lawvere and Brenda Lawvere to Appellees' PA State Constables, et al. motion to file supplemental appendix Certificate of service dated 7/28/97. (cpm)

8/1/97 AMENDED MOTION filed by Appellees PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber to file supplemental appendix. . Answer due 8/8/97. Certificate of Service dated 7/29/97. (cpm)

8/11/97 MOTION filed by Appellant to reconsider order dated 7/29/97 Answer due 8/18/97. Certificate of Service dated 8/8/97. (cpm)

8/11/97 Document entitled "Appellants' Motion to Strike Appellee Pennsylbania State Constables Motion for Leave to File a Supplementary Appendix and Amended Motion for Leave to File a Supplemental Appendix" construed as a RESPONSE filed by Appellants Scott Lawvere and Brenda Lawvere to Appellee's Amended Motion to file supplemental appendix. Certificate of service dated 8/7/97. (cpm)

8/25/97 ORDER (Clerk) The Motion by Appellees, PA State Constables, Larry Peterman, Steven Litzelman and Gurn Weber, to file a supplemental appendix together with the response by Appellants and the Amended Motion by Appellees to file a supplemental appendix together with the response by Appellants are considered. The supplemental appendix is received for the information of the Courtr only as

it does not comply with the Federal Rules of Appellate Procedure and/or Third Circuit Local Appellate Rules in that it does not contain a table of contents. The supplemental appendix shall be filed only if the Court so directs. The motion by Appellants to Reconsider the Clerk order dated July 29, 1997 is denied, filed. (cpm)

9/8/97 MOTION filed by Appellants for Judicial Determination. Answer due 9/16/97. Certificate of Service dated 9/6/97. ZZ#SEND ZZ#TO ZZ#MERITS (cpm)

9/10/97 Document submitted by Appellants entitled "Unsworn Declaration Under The Penalty of Perjury {pursuant to Title 28, Section 1746(1)}," received. ZZ#SEND ZZ#TO ZZ#MERITS (cpm)

9/23/97 ORDER (Clerk) referring to the merits panel the motion by Appellants for Judicial Determination together with the document entitled "Unsworn Declaration of Brenda lavere" for such action as the judges deem appropriate. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (cpm)

10/3/97 CALENDARED for Thursday October 16, 1997. (par)

10/16/97 SUBMITTED (Pro se - 3rd Cir. LAR 34.1(a)) October 16, 1997 Coram: Stapleton, Cowen and Lewis, Circuit Judges. (par)

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Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

11/13/97 ORDER (Stapleton, Authoring Judge, Cowen, Lewis, Circuit Judges) motion by appellees' to designate exhibits for inclusion in appendix, which the court may wish to construe as a motion to file a supplemental appendix and

denying and motion by appellants' to strike appellees' motion to designate exhibits for inclusion in appendix, which the court may wisht to construe as a motion to file a supplemental appendix are denied, filed. (ctc)

11/14/97 JUDGMENT-ORDER (Stapleton, Authoring Judge, Cowen, Lewis, Circuit Judges), AFFIRMED: Costs taxed against appellant, filed. (lrb)

11/26/97 BILL OF COSTS filed by Appellees Gurn Weber, Steven Litzelman, Larry Peterman and Appellee PA State Constables. Certificate of service dated 11/24/97 (lrb)

11/28/97 PETITION by Appellants Scott and Brenda Lawvere for rehearing in banc. Certificate of service dated 11/28/97, filed. (lrb)

11/28/97 LETTER filed by Appellants Brenda Lawvere and Scott Lawvere construed as a motion for leave to file exhibits with the petition for rehearing inbanc. (lrb)

11/28/97 Exhibitin support of appellants' petition for rehearing en banc recieved for the information of the Court Only. (lrb)

12/4/97 MOTION filed by Appellants Brenda Lawvere and Scott Lawvere for leave to supplement the petition for rehearing with attached documents. Certificate of Service dated 11/29/97. (lrb)

12/5/97 ORDER (Stapleton, Circuit Judge) granting motion by Appellants Brenda Lawvere and Scott Lawvere for leave to file exhibits in support of the petition for rehearing in banc, filed. (lrb)

12/5/97 ORDER (Stapleton, Circuit Judge) granting motion to supplement the petition for rehearing in banc with

attached exhibits by Appellant Brenda Lawvere, Scott Lawvere, filed. (lrb)

12/22/97 ORDER (Sloviter, Chief Judge, Becker, Stapleton, Authoring Judge, Mansmann, Greenberg, Scirica, Cowen, Nygaard, Alito, Roth, Lewis, McKee, Rendell, Circuit Judges) denying petition for in banc rehearing by Appellants Brenda Lawvere and Scott Lawvere, filed. (lrb)

12/30/97 MANDATE ISSUED, filed. (ddw)
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UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE.) Ambassadors for Christ, **Appellants**)	Appeal No: 97-7215 Case No: 4:CV-95-1515
vs.	
EAST LYCOMING SCHOOL DISTRICT, et al In their official and individual capacities, **Appellees**	

APPELLANTS' OBJECTION TO DEFENDANT CONSTABLES BILL OF COSTS

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Objection to Defendant Constables Bill of Costs.

1. On November 24, 1997, Defendant Constables entered a bill of costs for the reproduction of the brief and appendix in accordance with this courts ruling on November 14, 1997.

2. Plaintiffs object to this alleged bill of costs and would like Defendants to produce a copy of an itemized bill from said Defendants. **(Plaintiffs have attached a copy of Defendants bill of costs for your convenience.)** This bill clearly violates LAR 39.0(c).

3. Plaintiffs also object to Defendants adding the costs of photocopying their appendix of 12 pages since it was entered in violation of the rules and these costs should be disallowed.

4. Plaintiffs have learned through personal knowledge and research that Defendant Constables have overcharged and padded their bill. Plaintiffs have called a local stationary store called Plankenhorns where Williamsport attorneys buy their cover stock. We were told that the cost of the cover stock cost from .06-.08 cents per page, this reflects current market prices. Plaintiffs feel that the following sample of a bill of costs would be a more reasonable and fair bill.

Reproduction per page	20 x 16 pgs. @ .10 ea.	$32.00
Bindings	20 @ 2.00 ea.	$40.00
Covers (this includes front and back)	20 @ .30 ea	$ 6.00
Total	$78.00	

WHEREFORE because of the above mentioned facts and figures, Plaintiffs respectfully request that this Honorable court reject Defendant Constables Bill of Costs, and in the alternative accept Plaintiffs estimated costs which is more reasonable or make Defendant Constables produce an itemized bill.

Respectfully Submitted By:

_____

Scott and Brenda Lawvere, Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE,) Ambassadors for Christ, **Appellants**)	Appeal No: 97-7215 Case No: 4:CV-95-1515
vs.	
EAST LYCOMING SCHOOL DISTRICT, et al In their official and individual capacities, **Appellees**	

APPELLANTS' MOTION FOR LEAVE TO FILE APPELLANT'S OBJECTIONS TO DEFENDANT CONSTABLES BILL OF COSTS

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Motion for Leave to File Appellants' Objections to Defendant Constables Bill of Costs, which was submitted within time but the Clerk of Courts refuses to file without this motion. Plaintiffs memorandum of law is incorporated herein.

I. Procedural History

1. Defendant Constables' filed their Bill of Costs for photocopying of their Reply Brief and unauthorized Supplemental Appendix, in the amount of $119.00 on November 24, 1997. [Note: This is not reproduction which allows for a higher rate].

2. Plaintiffs objected to this alleged Bill of Costs and served said objection on December 5, 1997. (see attached Exhibit "A" certificate of service). The Clerk's office has refused to file Plaintiffs' Objection.

II. Argument

3. On December 16, 1997, Lenore R. Benoit, case manager, sent Plaintiffs a letter stating she refused to enter Plaintiffs' Objection to the Bill of Costs into the record, claiming that said "Objection" was untimely (see attached exhibit "B").

Ms. Benoit alleged basis for this claim is pursuant to F.R.A.P. Rule 39(d). This rule states that "Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court." (Page 75, #rd Circuit Local Appellate Rules)."

4. F.R.A.P. Rule 26(c) "Additional Time After Service by Mail" states that "Whenever a party is required or permitted to do an action within a prescribed period after service of a paper upon that party and the paper is served by mail, 3 days shall be added to the prescribed period."

"Defendant Constables mailed their Bill of Costs on November 24, 1997. Plaintiffs had 10 PLUS AN ADDITIONAL 3 days to respond since said Bill of Costs was served by mail and Plaintiff was required to respond within "10 days of service" (F.R.A.P. Rule 39(d)". To wit, Defendant served said Bill of Costs on November 24, 1997. From November 25, 1997, Plaintiff had 13 days to FILE said Objection with the Court. On December 5, 1997, well within the time allowed by the Court, Plaintiffs mailed their Objection to the Court."

5. This is not the first time the Clerk's office has made judicial decisions without being duly authorized pursuant to the Federal Rules of Appellate Procedure. Plaintiffs had submitted a Motion for Judicial Determination to the Third Circuit which was not addressed. The Third Circuit has not issued an order allowing the Clerk's office to dispose of Motions and certainly Ms. Benoit does not have the authority to interpret the Rules of Court as she sees fit.

6. If there was any question regarding the timeliness, Ms. Benoit should have presented those questions to the Court and not relied upon her own discretion which in fact violates the very Rules upon which she allegedly relies.

"F.R.A.P. Rule 25(a) specifically states:
"A paper required or permitted to be filed in a court of appeals must be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing, EXCEPT that briefs and appendices are treated as filed on the day of mailing if the most expeditious form of delivery by mail, except special delivery, is used."

Plaintiffs, who are not attorneys, have shown due diligence throughout this action in attempting to comply with the Rules of Court even though they are under no obligation to do so. Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652 (1972) and Conley v. Gibson, 355 U.S. 41, 2 L.Ed2d 80 (1957). According to the Rules of Court, Plaintiffs Objection was timely, and it is NOT within Ms. Benoit's purview to make a determination otherwise.

7. Plaintiffs also point out that the Defendants have not followed the Rules of Appellate Procedure or the Local Rules. And now when there is a question as to whether or not the Plaintiffs are one day late, the Clerk's office decides to hold Plaintiffs to a higher standard which is not only unprofessional but also violates Plaintiffs' rights to have equal access to the courts and due process of law.

III. Conclusion

WHEREFORE, based upon the foregoing facts and evidence, Plaintiffs respectfully request leave to file their Objection to Defendant Constables Bill of Costs or in the alternative have said Objection which is currently in the hands of the Clerk's office be deemed timely filed."

Respectfully Submitted By:

Scott and Brenda Lawvere,
Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE,) Ambassadors for Christ, **Appellants**)	Appeal No: 97-7215 Case No: 4:CV-95-1515
vs.)	
EAST LYCOMING SCHOOL DISTRICT, et al. In their official and individual capacities, **Appellees**)	

APPELLANTS' MOTION
FOR MANDAMUS

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Motion for Mandamus, pursuant to the Federal Rules of Appellate Procedure, to compel the Clerks office of the Appellate Court, in particular, Lenore Benoit, case manager, to perform her duties as prescribed in the Federal Rules of Appellate Procedure and statutory law. Plaintiffs memorandum of law is incorporated herein.

I. PROCEDURAL HISTORY

1. Defendant Constables' filed their Bill of Costs for photocopying of their Reply Brief and unauthorized Supplemental Appendix, in the amount of $119.00 on November 24, 1997.

2. Plaintiffs objected to this alleged Bill of Costs and served said "Objection" on December 5, 1997. (see attached exhibit "A" certificate of service). The Clerks office has refused to file Plaintiffs' "Objection.

3. On December 16, 1997, Lenore R. Benoit, case manager, sent Plaintiffs a letter stating she refused to enter Plaintiffs' Objection to the Bill of Costs into the record, claiming that said "Objection" was untimely (see attached exhibit "B").

II. ARGUMENT

4. Provisions for the Clerks of District Courts are provided by statutory law and can be found in Title 28, U.S.C. More specifically, duties for Clerks on the Appellate Level can be found at Rule 45, Federal Rules of Appellate Procedure. The Clerk's responsibilities include but are not limited to creating court files, preparing dockets and maintaining dockets, and filing motions, pleadings, and documents submitted by parties to actions in court. Plaintiffs have found no provisions in the F.R.A.P. Rules, or LAR rules allowing Clerks to refuse to file properly served papers.

5. The clerk of Court may dispose of motions that "ordinarily" can be disposed of by a single judge pursuant to F.R.A.P. Rule 27(c) and LAR 27.5 , providing the Appellate Court has issued such an order, and the motions are "ministerial" in nature.

The Third Circuit has NOT issued an order granting the Clerk of Court the same authority as the "single judge" to dispose of motions of a ministerial nature, or for that matter, any other motion. Nor has there been any order that grants the Clerks office the authority to refuse to file documents into the record.

6. The Clerk's office has a long established custom and policy of acting without legislative authority or an order from the Court, Disposing of motions, calling the Defendant's Attorneys and giving legal advice and now refusing to file properly served papers of Plaintiffs who are Pro Per. The record shows that the Clerk's office has repeatedly held Plaintiffs, Pro Per, to a higher standard than the Defendant's Attorneys in this action, violating Plaintiffs rights including but not limited to access to the courts, and their due process rights.

The Clerk's office has called the Defendants Attorneys on July 2, 10, 14, 16 advising them to correct procedural errors, and asking them to file papers with the Court. The Clerk's office even filed Defendant Constables Motion to Supplement their Appendix on July 28, 1997, even though Plaintiffs have never to this day been served those documents. The Clerk's office did of course require Plaintiffs to answer a motion that they were never served.

The Clerk's office has ruled on the majority of the motions entered upon the docket, without authority. In fact Plaintiffs have numerous unopposed motions in the docket that the Clerks office has denied. When Plaintiff Brenda Lawvere questioned Ms. Benoit concerning these unopposed motions, Ms. Benoit stated, "that it did not matter whether the Motions were unopposed that the Defendants were

not required to respond to them, and that it was within the discretion of the Clerks office to deny those unopposed motions", clearly a violation of her duties as an officer of the court.

7. It is apparent on the record that Defendant Langdon was granted preferential treatment in that his motion was "granted" by the Clerk's office when similar motions submitted by the other Defendants were submitted to the merits panel or were "considered".

8. Neither the Legislature, the Court, nor the Rules make provisions for Clerks of Court to give out legal advice. The Clerk has not been given the authority to dispose of motions without express permission from the Court. Nor has the Clerk been given the authority to refuse to file properly served papers or make determinations as to what is to be filed. The Clerk's duties and responsibilities as outlined in Title 28, U.S.C. is specifically ministerial in nature wherein the Clerk is authorized to create and maintain a court file and docket.

9. Plaintiffs, who are not attorneys, have shown due diligence throughout this action in attempting to comply with the Rules of Court even though they are under no obligation to do so. Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652 (1972) and Conley v. Gibson, 355 U.S. 41, 2L.Ed2d 80 1957). According to the Rules of Court, Plaintiffs Objection was timely, and it is NOT within Ms. Benoit's purview to make a determination otherwise.

For this and the above stated reasons, the Plaintiffs respectfully request that this honorable Court Order the Clerk's office, in particular

Lenore Benoit, case manager, to file all documents submitted to this court, specifically Plaintiffs "Objection.

WHEREFORE, because the Clerk's office, in particular, Lenore Benoit, refuses to do her duties as outlined in Title 28 U.S.C., Plaintiffs respectfully request that this Court Order the Clerk's office and Ms. Benoit to preform their duties and to file documents in the record as outlined by statute and the Rules of Court.

Respectfully Submitted By:

_____

Scott and Brenda Lawvere,
Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE,) Ambassadors for Christ,) **Appellants**) vs.)) EAST LYCOMING SCHOOL) DISTRICT, et al In their official) and individual capacities,) **Appellees**)	Appeal No: 97-7215 Case No: 4:CV-95-1515

APPELLANTS' MOTION FOR
JUDICIAL DETERMINATION
REGARDING AN ALTERED
ORDER DATED DECEMBER 30, 1997

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Motion requesting a Judicial Determination of the following issue, which is directed to the Judges of the aforementioned Court of Appeals, Third Circuit. Appellants memorandum of law is incorporated herein.

I. Procedural History

1. On November 14, 1997, the Court issued a Judgment Order in regard to this case. **(See exhibit P21)**

2. On November 24, 1997, Defendants Constables, filed a Bill of Costs in accordance with that order, but in violation of the F.R.A.P. Rules regarding the computation of costs.

3. Plaintiffs filed a Petition for Rehearing on November 28, 1997, which was erroneously treated as a Petition for Rehearing in Banc.

4. On December 5, 1997, Plaintiffs filed an Objection to Defendant Constables Bill of Costs on this court and the Defendants in this case.

5. On December 29, 1997, Plaintiffs filed a Motion for Mandamus and a Motion for Leave to File.

6. On December 30, 1997, the clerks office, altered the Judgment Order dated November 14, 1997, and served it upon the parties to this action. **(see exhibit P22, altered order, and exhibit P23)**

7. As of January 3, 1998, Plaintiffs motions have not been entered upon the record. **(see exhibit P23, copy of docket as of January 3, 1998)**

II. ARGUMENT

6. Since the inception of this case there have been numerous irregularities in this case regarding the legislative and statutory authority of the Clerks office.

Plaintiffs incorporate their Motion for Judicial Determination filed September 6, 1997, into the record at this time.

8. On December 30, 1997, Debra D. Wall, Case Manager, altered a Judgment Order entered upon the record on November 14, 1997, taxing Plaintiffs a specific sum. Plaintiffs have disputed the costs entered upon the record by Defendant Constables. While the court can certify a copy of the judgment as outlined in F.R.A.P. Rule 41, there are no provisions in the rules for the Clerks office to rule on a motion for "Bill of Costs", nor does Title 28 provide statutory or legislative authority for the clerks office to amend and alter a Federal Judges order.

9. The Court has yet to rule on Plaintiffs "Objection to Constable's Bill of Costs, therefore this issue is ripe for disposition.

CONCLUSION

WHEREFORE, since the Court has not ruled on Defendant Constables Motion for Bill of Costs or Plaintiffs Objection and Opposition, and the Clerk's office has allegedly altered a Court Order, Plaintiffs respectfully request a hearing on this issue and ask the court to disallow the Clerk's Amended Order.

Respectfully Submitted By:

_____

Scott and Brenda Lawvere, Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNSWORN DECLARATION
UNDER THE PENALTY OF PERJURY
[pursuant to Title 28, § 1746(1)]

I , Plaintiff Brenda Lawvere , being of sound mind and competent to make this declaration, being above the age of 21 and having personal knowledge of the following facts do DECLARE:

On or about July 31, 1997, we received an order from the Clerks office granting Defendant Langdon's Motion for Inclusion. On or about the same time we received an Amended Motion for Inclusion from the Pennsylvania State Constables, Gurn Weber, Larry Peterman, and Steven Litzelman.

On or about July 31, 1997, I called the Clerks office regarding the Order of July 29, 1997, and the Amended Motion for Inclusion sent by the Constables, Peterman, Weber, and Litzelman. I asked the clerk, why they sent Defendant District and Schuller's Motion to the Committee and granted Defendant Langdon's Motion without hearing my Motion in response? The Clerk told me, "they did not receive my Motion to Strike until July 30, 1997", therefore, "they did not have it when they granted Defendant Langdon's Motion." I asked, why they granted his motion 1 day after my response was due, and I received no response.

I also told the Clerk that I had just received an Amended Motion for Inclusion from the Constables, Peterman, Weber, and Litzelman, and that I had never received a Motion for Inclusion from them. She told me, "she knew" and, "we called their attorney the other day and told him that we would hold the Motion until they served the Appellant's with a copy." I told her, "I still had not received a

Motion for Inclusion from Defendant Constables, et al", and I asked her where that left me with answering the Motion that was never served. She informed me "she did not know, and that she could not give me legal advice."

On or about August 20, 1997, I acquired a copy of the Docket. Our Motions to Strike, submitted on July 28, and August 7, 1997, were never recorded, and at that time we discovered that the Clerks repeatedly contacted the other parties without our knowledge. On or about August 30.1997, I received another order from the Clerk "considering" Defendant Constables Motion for Inclusion, and denying our Motion for Reconsideration of the Courts order of July 29, 1997.

On or about August 30. 1997, I contacted the clerks office, and asked her why my motions were not filed. She told me " that they had just been filed, because they had to figure out what to do with them". I asked her why they called the Defendants and asked them to correct their procedural errors. She told me, "that they do that all the time".

I then spoke to Joanne Edwards, Information Officer, in the Staff Attorneys Office. I asked Ms. Edwards, if the Clerks Office could call the parties and advise them to correct procedural errors, and why. She told me, that it was a discretionary function of the Clerks office and that "some of the Attorneys don't know the rules of the Third Circuit Court of Appeals, so they had to be notified of their mistakes so they can be corrected." I told her that the Attorneys were all admitted to practice in the Third Circuit and that I knew some of the Attorneys, in this case, were known on a first name basis by some of the staff. Ms. Edwards also said that we didn't make any mistakes, therefore they didn't call us. I asked her why the clerks office would call parties and not notify us, the Appellant's, of what was going on. She did not

know but she suggested that we contact the clerks office concerning this matter.

I asked her why Defendant Langdon's Motion was granted and the East Lycoming School District and Schuller's Motion, which asked for the same thing, was referred to the committee. I told her, we were being held to a higher standard. I asked, why they would grant Defendant Langdon's Motion for Inclusion, one day after our response was due, without considering out Motion in response. She did not know.

I asked, why the Constables Motion and Amended Motion was allowed to stay in the record and was not struck. She said, the motion was not going to be in the record, it would only be filed if the Judges allowed it. I asked, why it was considered and not sent on to the Judges. She said, I was mistaken and that was not true. She began to tell me that the Appellant's got to submit their brief and appendix, and then the Appellee's got to submit their brief and appendix. I told her that the appendix was to be a joint appendix, to which there was no reply.

I asked, where the duties of the clerk of court can be found. She said, they could be found in the Federal Appellate Procedure under Clerk of Appeals. I asked, where does the clerk get his authority to hear motions? She laughed and said, "he was next level down from the Judge". I asked her where the Order was granting the Clerk authority to rule on Motions. She said, the order of July 29, 1997 was the order.

I , Plaintiff Brenda Lawvere , DECLARE under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Signed _____
Name Brenda Lawvere,Ambassador for Christ
Mailing Address c/o P.O. Box 46,Unityville Pa. 17774

State of Pennsylvania
County of Lycoming

Acknowledged and subscribed before me this _____ day of _____, 19___ A.D.

NOTARY SEAL

_____
Notary Signature

CERTIFICATE OF SERVICE

We, Scott and Brenda Lawvere, Ambassadors for Christ, do hereby certify that the foregoing Appendix to the Petition for Writ of Certiorari was sent U.S. Mail, postage prepaid, to Defendants' Attorneys at the following addresses: East Lycoming School District, Robin Schuller, c/o Anthony Sherr, Esq., 200 Four Falls Corp. Ctr., P.O. Box 800, Suite 400, West Conshohocken, Pa. 19428; Pennsylvania State Constables, Gurn Weber, Larry Peterman, and Steven Litzelman, c/o J. David Smith, Esq., 835 W. 4th St., Williamsport, Pa. 17703; J. Howard Langdon, c/o. Edward Monsky, 425 Spruce St., Scranton, Pa. 1805; C. Roger McRae, c/o Maryellen Gallagher, 1515 Market St., Suite 1414, Phil., Pa. 19102; ~~This document was also served upon the Respondent, U.S. Appellate Court, Third Circuit, by the sheriff in accordance with Rule 00, of the Supreme Court Rules.~~ BF

Done this 12 day of February, 1998.
Respectfully Submitted,
Scott & Brenda Lawvere, Ambassadors for Christ, Petitioners

Scott and Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46
Unityville, Penn. 17774
(717)458-4522